



Neutral Citation Number: [2023] EWHC 2976 (KB)

Case No: QB-2022-001688

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 November 2023

Before:

DEXTER DIAS KC
(Sitting as a Deputy High Court Judge)

Between:

James William Wagstaff
(a protected party by Catherine Carr, his daughter
and Litigation Friend)

Claimant

- and -

William Murison

Defendant

Richard Baker KC (instructed by **CFG Law**) for the **Claimant**
Charlotte Reynolds (instructed by **Clyde and Co. LLP**) for the **Defendant**

Hearing date: 8 November 2023

Approved Judgment

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DEXTER DIAS KC

Dexter Dias KC:

(Sitting as a Deputy High Court Judge)

1. This is the judgment of the court.
2. In this personal injury claim, the court must rule upon whether damages agreed in the compromised claim in respect of a protected party should be approved by the court.
3. The claimant James William Wagstaff is a protected party (CPR 21.2(1)). He is now 93 years old. He appears by his litigation friend, who is his daughter, Mrs Catherine Carr. Mrs Carr has a pre-existing power of attorney. The claimant is represented by Mr Baker KC. The defendant is William Murison. The defendant is represented by Ms Reynolds of counsel.

Background

4. On 6 May 2021, Mr Wagstaff, a fiercely independent man in the tenth decade of his life, who lived and continued to work on his substantial farm holding in Henley-on-Thames, while walking across a carpark, was involved in an accident with a motor vehicle. He was seriously injured in a collision with a vehicle driven by the defendant Mr William Murison.
5. On that day, Mr Wagstaff had been visiting the John Radcliffe Hospital in Oxford for a routine ophthalmic check-up. He drove himself to the appointment, which he attended alone. He was crossing the hospital carpark when he was struck by a car driven by Mr Murison. At the time, the defendant was an 81-year-old man, who was also attending an appointment at the hospital. It seems that he pressed the accelerator of his car, rather than the brake, crashed through a barrier and collided with the claimant before hitting another vehicle.
6. As a result, Mr Wagstaff received multiple serious injuries including moderately severe brain damage. He sustained a subdural haematoma, a small amount of traumatic subarachnoid haemorrhage and a large subgaleal haematoma. While the claimant was in hospital, he suffered a seizure. Mr Wagstaff also sustained bruising and lacerations on the left side of his face, left hand and left leg.
7. Judicial College Guidelines provide the following:

(b) Moderately Severe

The injured person will be very seriously disabled. There will be substantial dependence on others and a need for constant professional and other care. Disabilities may be physical, for example, limb paralysis, or cognitive, with marked impairment of intellect and personality.

8. A capacity report was obtained from Pam Clarke, Case Manager dated August 2021 which confirmed that Mr Wagstaff lacked capacity to litigate pursuant to the Mental Capacity Act 2005. There has been dispute between parties about whether the cognitive difficulties that Mr Wagstaff undoubtedly experiences is or is substantially attributable to the collision as opposed to “progressive neurological decline”. At the time of injury, Mr Wagstaff was 90 years old. His life expectancy is up to approximately 95 years, but these are predictions and actuarial projections and not certainties.
9. Liability was accepted by Mr Murison on 20 March 2022, that is, before the claimant issued proceedings. Liability having been admitted, the claimant issued proceedings in the High Court on 27 May 2022, just about a year after the incident. There has been full admission of liability by the defendant and there was no contributory negligence.
10. Judgment was entered on 15 November 2022 by Master Gidden. The case thus resolved into a question of the quantum of damages. A date was set for a three-day trial to begin on 8 November 2023, today’s date. However, it did not proceed as a Part 36 offer was made on behalf of the defendant on 31 October 2023. It was accepted on behalf of the claimant by a letter of the same date.

Approval

11. Turning to the question of approval, I am grateful to both legal teams for the great care with which they have prepared this case and the obvious sensitivity with which they have presented it.
12. The purpose of today's hearing is for the court to consider whether the proposed settlement of damages agreed between parties is in the best interests of the claimant. The court is required to approve the terms of settlement as Mr Wagstaff is a protected party. It is an elementary proposition that court approval engages questions of judgment. It must act in the interests of justice and the best interests of the protected person and have regard to the overriding objective. As stated by Lady Hale in *Dunhill v Burgin* [2014] UKSC 18 at [20], the purpose of approval hearings in accordance with CPR 21.10(1) is

“to impose an external check on the propriety of the settlement.”
13. Part 21 of the CPR includes rule 21.10. Its subheading is “Compromise etc. by or on behalf of a child or protected party”. The rule provides insofar as it is material:

21.10

(1) Where a claim is made –

(a) by or on behalf of a child or protected party;

no settlement, compromise or payment (including any voluntary interim payment) and no acceptance of money paid into court shall be valid, so far as it relates to the claim by, on behalf of or against the child or protected party, without the approval of the court.

14. In a case where the court’s approval is sought, the court should be provided with an opinion from the claimant’s legal representatives on the merits of the settlement or compromise and any financial advice. Mr Baker’s confidential advice is dated 7 November 2023 and is an invaluable and comprehensive document. It sets out with great clarity and precision why the settlement is considered by the claimant’s legal team to be appropriate, by reference to an assessment of the quantum of recoverable loss, weighing the risks and uncertainties of litigation and the strengths and weaknesses of the evidence. I have also read the detailed and complex expert reports that speak to this case.
15. The structure of the settlement is as follows:

Gross lump sum		£320,000
	<u>Plus</u> periodical payment due on 1 July 2024 for the remainder of the claimant’s life	£45,000 per annum
	<u>Less:</u> Interim payments	-£120,000
Net lump sum:		£200,000

16. The defendant’s liability under the Social Security (Recovery of Benefits) Act 1997 to the Compensation Recovery Unit is nil.
17. Should the proposal of the award include periodical payments, the court is obliged to consider the appropriateness of the payment structure. CPR 41.7 provides that the court must:
- “... have regard to all the circumstances of the case and in particular the form of award which best meets the claimant’s needs, having regard to the factors set out in the practice direction.”
18. Part 41 of the Rules and Practice Direction 41BD taken together list the relevant factors including the scale of the annual payments and the preferences of both the claimant and the defendant.
19. The court has read the confidential report from the Independent Financial Adviser, Mark Holt of Frenkel Topping dated September 2023. It confirms the advantages of periodical payments within the structure of an award that is required to meet lifetime needs. It is said that the objective is to

“1. ... ensure that as much of [Mr Wagstaff’s] future losses are catered for, whether that be by way of traditional lump sum settlement or with the inclusion of Periodical Payments.

2. Maintaining the balance between lump sums and Periodical Payments is important and the optimum settlement should be weighted between the risk of exceeding life expectation and his need for capital and flexibility.

3. It is crucial to ensure that any residual lump sum is sufficient to cover Mr Wagstaff’s immediate and planned capital expenditure, as well as offering the means to pay for other future losses.”

20. I agree that this is a sensible structure from the claimant’s point of view. I find that this settlement is in Mr Wagstaff’s best interests. On that basis I approve the settlement under CPR 21.10.
21. I also approve the requested payment out of the claimant’s damages in the sum of £2,632 for the After the Event insurance premium, pursuant to the court’s powers under CPR 46.4(2)(b)(ii) and 46.4(3).
22. The Defence Insurer shall pay a further interim payment on account of costs in the total sum of £100,000. Interest on costs shall start to run 21 days after a cost breakdown or a draft bill is served upon the Defence Insurer.
23. To conclude, I would like to say something about what the claimant is like. Mr Wagstaff is described as a strong man who prided himself on his independence, even at 90 years of age. He was actively participating in manual work on Hayden Farm, where he lived. He regularly went travelling both independently and with his adult children. For example, as recently as 2019, he hired a campervan and drove many miles when he was on holiday in New Zealand. In the same year he drove to Austria from his home, travelling through the Netherlands and Germany, and in November 2019 he travelled to India, remaining there alone for a week before being joined after a week by Mrs Catherine Carr and his other daughter Ms Elizabeth Wagstaff.
24. Beyond these adventures, he enjoyed socialising with friends and family. His other interests included cooking and shopping, which he managed independently without assistance, and fine wines, which he curated in his wine cellar. Mrs Carr informs the court today that her father remains very frustrated as driving was one of his chief passions and he cannot now do it. Every day he sits in his car, which will never again go anywhere under his control, and stares out of the window.
25. Due to the deficits he lives with, his life is restricted to engaging in a limited range of activities. He continues to be affected by several issues, including cognitive, emotional and interpersonal difficulties and physical problems. Mr Wagstaff has a significant risk of post-traumatic epilepsy which is being mitigated by use of prophylactic anticonvulsants. He experiences low mood, aggression and increased irritability; impulsivity; difficulty with short term memory; difficulty with processing numbers/mental arithmetic; problems with concentration; mobility problems; impaired cognitive skills and lacks the insight of possible risks to himself.

26. All this has unquestionably been a tremendous strain on the claimant and his family. The court conveys to Mr Wagstaff and his family that it appreciates that no amount of money can turn back the clock and put them in the position they would have been in had Mr Wagstaff's injury not occurred. Money cannot do that. It is simply the best we can do. A proxy for the quantification of the pain and suffering, heartbreak and anxiety that they continue to experience in many different ways. But I do hope that the end of these proceedings will be a relief and this long-awaited financial settlement will make life a little easier. The court pays particular tribute to the unstinting and selfless care and support Mrs Carr has provided her father.
27. I have emphasised to Mrs Carr that this judgment will be published to the National Archives so that a copy will always be available to the claimant - this is his case. Later today, she will sit down with her father and read through the judgment with him. I wish all his family, and Mr Wagstaff especially, the very best.
28. That is my judgment.